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**In the Supreme Court of the United States**

**OCTOBER TERM, 1982**

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**COMMON CAUSE, ET AL., APPELLANTS**

**v.**

**WILLIAM F. BOLGER, POSTMASTER GENERAL, ET AL.**

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**ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

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**MOTION OF THE EXECUTIVE APPELLEES TO AFFIRM**

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### **QUESTION PRESENTED**

**Whether the Congressional Franking Act of 1973, 39 U.S.C. (& Supp. V) 3210, violates appellants' rights to participate in the electoral process, in violation of the First and Fifth Amendments.**

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## **MOTION OF THE EXECUTIVE APPELLEES TO AFFIRM**

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The Solicitor General, on behalf of the Postmaster General and the Secretary of the Treasury, moves that the judgment of the district court be affirmed.

### **OPINION BELOW**

The opinion of the district court (J.S. App. 1a-27a) is not reported.

### **JURISDICTION**

The order of the district court granting summary judgment (J.S. App. 28a) was filed on September 7, 1982 and entered on September 8, 1982. A notice of appeal to this Court was filed on Monday, November 8, 1982 (J.S. App. 54a), and the Jurisdictional Statement was filed on January 7, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

**The First Amendment provides in pertinent part:**

**Congress shall make no law \* \* \* abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.**

**The Fifth Amendment provides in pertinent part:**

**No person shall \* \* \* be deprived of life, liberty, or property, without due process of law \* \* \*.**

**Section 1(a) of the Congressional Franking Act of 1973, 39 U.S.C. (& Supp. V) 3210, and 2 U.S.C. (& Supp. V) 501-502 are set out at J.S. App. 55a-69a.**

### **STATEMENT**

**1. "Frank" is defined as the facsimile signature of one authorized by statute to transmit matter through the mail without prepayment of postage. 39 U.S.C. 3201. It is a legislative privilege that pre-dates the Constitution. S. Rep. No. 93-461, 93d Cong., 1st Sess. 2 (1973). In 1775 the Continental Congress authorized the use of the frank by its Members. When it established the postal system in 1789, the First Congress retained the privilege for documents and correspondence. S. Rep. No. 97-155, 97th Cong., 1st Sess. 3-4 (1981). Except for a period after the Civil War, the privilege has been in existence throughout our Nation's history. The purpose of the frank, essential to our representative form of government, is to aid the conduct of the official business of Congress by conveying information to and requesting the views of the public. 39 U.S.C. 3210(a)(1) and (2).**

**The Congressional Franking Act, 39 U.S.C. (& Supp. V) 3210, establishes a franking privilege for all mail matter pertaining to the "official business, activities, and duties of the Congress" (39 U.S.C. 3210(a)(1)). The Act prohibits**

transmission as franked matter of anything that "is purely personal to the sender or to any other person and is unrelated to the official business" of Congress. 39 U.S.C. 3210(a)(4). To illustrate these broad definitions, the Act provides examples of both frankable and nonfrankable matter. The former includes newsletters, questionnaires, federal laws and regulations, nonpartisan voter registration and election information, mail directed to other Members of Congress or to other government officials, and congratulations to individuals who have achieved some public distinction. 39 U.S.C. (& Supp. V) 3210(a)(3).

The privilege is expressly withheld from mailings "laudatory and complimentary" of a Member "on a purely personal or political basis," materials soliciting political support or financial assistance, reports of how a Member spends time when not performing his official duties, and holiday greeting cards. 39 U.S.C. (& Supp. V) 3210(a)(5). The statute restricts the size and frequency of pictures of Members included in newsletters and mass mailings (39 U.S.C. 3210(a)(3)(J)), prohibits Members from sending out unsolicited mass mailings (those exceeding 500 pieces) fewer than 60 days before any primary or general election in which they are candidates (39 U.S.C. (Supp. V) 3210(a)(6)), and requires that the cost of mass mailings be defrayed exclusively from appropriated funds and not campaign funds (39 U.S.C. (Supp. V) 3210(f)).

The Act also establishes for the House a special commission—composed of Members—known as the House Commission on Congressional Mailing Standards; in the Senate the Act delegates responsibility to the Select Committee on Standards and Conduct of the Senate.<sup>1</sup> 2 U.S.C. (& Supp.

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<sup>1</sup>S. Res. 4, 95th Cong., 1st Sess. (123 Cong. Rec. 3692 (1977)), changed the name to the Select Committee on Ethics.

V) 501-502. Both bodies are required to "provide guidance, assistance, advice, and counsel, through advisory opinions or consultations, in connection with the mailing or contemplated mailing of franked mail" (2 U.S.C. (Supp. V) 501(d); 2 U.S.C. 502(a)). Before making some kinds of franked mass mailings, Members of the House must submit samples or descriptions to the House Commission. 39 U.S.C. (Supp. V) 3210(d)(6)(A). The Act authorizes the Senate Committee to impose similar requirements. 39 U.S.C. (Supp. V) 3210(d)(6)(B).

Both the House Commission and the Senate Committee are required to "prescribe regulations governing the proper use of the franking privilege" (2 U.S.C. (Supp. V) 501(d); 2 U.S.C. 502(a)). Both have done so. Included among the regulations are prohibitions against references in franked mailings to past or future campaigns, a prominent party label with the Member's picture, news releases announcing filing for reelection, the Member's campaign schedule, and the like.<sup>2</sup> The Act also provides an administrative procedure for dealing with violations. Judicial review of the administrative determination is contemplated. 2 U.S.C. (Supp. V) 501(e); cf. 2 U.S.C. 502(c).

2. Appellants Common Cause and John W. Gardner filed this action in 1973 on behalf of Common Cause's members, who are candidates and voters. By amended

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<sup>2</sup>The latest version of the procedures available in the Senate for counsel and review of questions about the proper use of the frank is contained in Select Committee on Ethics, United States Senate, *Regulations Governing the Use of the Mailing Frank by Members and Officers of the United States Senate* (1979). The House's regulations governing the use of the frank and rules of practice before the Commission are found in *Regulations on the Use of the Congressional Frank by Members of the House of Representatives* (1979).

The authority to promulgate such rules is based both on the Act and on Article I, Section 5 of the Constitution, which authorizes each House to regulate the conduct of its members.

complaint filed in March 1974, they requested a declaratory judgment that 39 U.S.C. 3210 is unconstitutional, an injunction against the operation of the statute, and an order that the defendants inspect franked mail and refuse to honor and pay for it when used for mass mailings and other matters not pertaining to Congress's official business (J.S. App. 44a-45a). Named as defendants were the Postmaster General and the Secretary of the Treasury. The House Commission on Congressional Mailing Standards intervened as a defendant, and the Senate participated as *amicus curiae*. Appellants argued that free use of the mail by Members of Congress violates their First and Fifth Amendment rights to fair elections by giving incumbents seeking reelection a substantial financial advantage over their opponents.<sup>3</sup>

A three-judge district court was convened pursuant to 28 U.S.C. 2282.<sup>4</sup> After extensive discovery the parties filed cross-motions for summary judgment. Defendants argued that the Act and the congressional rules promulgated under it facilitate necessary communication between Members of Congress and their constituents while preventing illegitimate uses of the frank.<sup>5</sup>

On September 8, 1982, the district court entered judgment for the defendants. The court found that "the franking privilege is a valuable tool in facilitating the performance by

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<sup>3</sup>Appellants also argued that the Congressional Franking Act permits an unlawful use of public funds for a nonpublic purpose in violation of the General Welfare Clause. U.S. Const. Art. I, § 8, cl. 1.

<sup>4</sup>Pub. L. No. 94-381, 90 Stat. 1119, which removed "substantial constitutional questions" from the class of cases to be heard by three-judge district courts, does not apply to actions begun before its enactment on August 12, 1976. See *Rostker v. Goldberg*, 453 U.S. 57, 62 n.2 (1981).

<sup>5</sup>The defendants also argued that Common Cause and its members lacked standing to challenge the validity of the Act. The district court rejected this contention (J.S. App. 30a-47a, 49a-53a).

individual Members of Congress of their constitutional duty to communicate with and inform their constituents on public matters" (J.S. App. 11a). It also found that Congress "has recognized the dangers, constitutional as well as practical, of extending the franking privilege to [unofficial] mailings and has excluded them or expressly prohibited them under the statute and rules in both Houses" (*id.* at 22a). The court further noted that the evidence showed no relationship between the use of the frank and the outcome of an election (*id.* at 14a, 22a). While it recognized that the franking privilege could conceivably so unbalance the campaign process as to interfere with constitutional rights, the court nevertheless concluded that "the level of impact has not been shown to be sufficient in this case \* \* \* to \* \* \* [warrant] redrafting" the Act (*id.* at 27a).

#### ARGUMENT

Although the Jurisdictional Statement gives a different impression, the franking privilege is not a form of election funding. Cf. *Buckley v. Valeo*, 424 U.S. 1 (1976). Its function is rather to promote communication between government and the people. For that reason it is necessarily granted to members of Congress, and appropriately limited by statute to "the official business, activities, and duties of the Congress" (39 U.S.C. 3210(a)(1)). Appellants have conceded both the necessity and the propriety of those aspects of the franking statute (J.S. App. 21a).

Appellants nevertheless argue that the Congressional Franking Act, because it sweeps near the electoral process at some points in its orbit, must be viewed with the strictest scrutiny. So viewed, they contend, the Act is unconstitutional on its face, since it could do more than it does to prevent the possibility of benefit to incumbents. In lieu of the measures Congress has taken to avoid that danger, they propose (J.S. 15, 18) that this Court forbid Members of

Congress to communicate with their constituents by franked mail if the "purpose or primary effect" of the communication is to advance an incumbent's campaign for reelection.

These contentions are without merit. The proper question is simply whether the lines drawn in the Act are reasonable ones. They are clearly so; indeed, they are far preferable to those proposed by appellants. There is no need for plenary review of the district court's decision, which correctly states those obvious points.

**I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE CONGRESSIONAL FRANKING ACT IS CONSTITUTIONAL BECAUSE IT INCLUDES REASONABLE SAFEGUARDS AGAINST IMPROPER INFLUENCE ON THE ELECTORAL PROCESS**

Appellants contend (J.S. 6-12) that the district court's decision is inconsistent with settled constitutional principles because it declined to apply a standard of strict scrutiny in examining the Act's effect on the electoral process. But this Court's decisions interpreting the First and Fifth Amendments unequivocally demonstrate the correctness of the district court's conclusion—that the Act includes reasonable, and hence constitutional, safeguards against improper influence on the electoral process. Accordingly, the district court correctly held that the Congressional Franking Act is not unconstitutional on its face. See *Nixon v. Administrator of General Services*, 433 U.S. 425, 455 (1977).

1. It is a remarkable—indeed fatal—commentary on appellants' argument for strict scrutiny that virtually every decision by this Court adduced in support of it has dealt

with: (i) governmentally imposed *restrictions* on the exercise or effectiveness of the franchise;<sup>6</sup> (ii) governmentally imposed *restrictions* on access to the ballot;<sup>7</sup> or (iii) governmentally imposed *restrictions* on (or penalties for) the exercise of freedom of speech or political association.<sup>8</sup> *Buckley v. Valeo, supra*, the one notable exception from that litany, explains succinctly why none of those cases is relevant here (424 U.S. at 93-94; emphasis added):

In several situations concerning the electoral process, the principle has been developed that *restrictions* on access to the electoral process must survive exacting scrutiny \* \* \* These cases, however, dealt primarily

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<sup>6</sup>*Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969) (New York law limiting entitlement to vote in school district elections); *Baker v. Carr*, 369 U.S. 186 (1962) (malapportionment of Tennessee General Assembly); *Reynolds v. Sims*, 377 U.S. 533 (1964) (malapportionment of Alabama legislature).

<sup>7</sup>*Illinois Elections Board v. Socialist Workers Party*, 440 U.S. 173 (1979) (signatures required for new parties and independent candidates to get on the ballot in Chicago elections); *Storer v. Brown*, 415 U.S. 724 (1974) (California's one-year disaffiliation provision for independents seeking ballot position); *Bullock v. Carter*, 405 U.S. 134 (1972) (fees as high as \$8900 to get on Texas primary ballot); *Williams v. Rhodes*, 393 U.S. 23 (1968) (signatures required by Ohio for third-party candidates seeking a place on presidential ballot).

<sup>8</sup>*First National Bank v. Bellotti*, 435 U.S. 765 (1978) (Massachusetts law forbidding corporate expenditures to influence vote on referendum proposals); *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) (ordinance forbidding door-to-door solicitation of contributions by some charitable organizations); *Police Department v. Mosley*, 408 U.S. 92 (1972) (ordinance forbidding nonlabor picketing near school buildings); *United States v. Robel*, 389 U.S. 258 (1967) (Subversive Activities Control Act provision forbidding Communist-action organization members to work at defense facilities); *Branti v. Finkel*, 445 U.S. 507 (1980) (patronage discharge of assistant public defenders); *Elrod v. Burns*, 427 U.S. 347 (1976) (patronage discharge of process servers, bailiff, and security guard).

with \* \* \* direct burdens not only on the candidate's ability to run for office but also on the voter's ability to voice preferences regarding representative government and contemporary issues. In contrast, *the denial of public financing to some \* \* \* candidates is not restrictive of voters' rights and less restrictive of candidates'.*

The difference in treatment between actual restrictions on First Amendment rights and the expenditure of public funds rests on several principles. The first is that the government collects and spends vast sums of money, and it is simply not possible—without unacceptable disruption—to prohibit every expenditure that has secondary effects on how people may vote.<sup>9</sup> The action of government in the latter situation thus comes with a momentum for respect lacking in the case of actual restrictions. The second is that however real such secondary effects may be, they nevertheless do not call for the same serious concern appropriate to actual restrictions on the exercise of constitutionally protected freedoms.<sup>10</sup> And only “[w]hen a statutory classification *significantly* interferes with the exercise of a fundamental right” is strict scrutiny appropriate. Compare *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978) (emphasis added), with *Califano v. Jobst*, 434 U.S. 47, 53-54 (1977).

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<sup>9</sup>As the district court pointed out, an incumbent simply by virtue of his role as a Member of Congress “has \* \* \* offices in his home district, in addition to his Washington office; he has a staff paid out of public funds; he has a WATS line for telephone calls which he may use to communicate with his constituents” (J.S. App. 24a).

<sup>10</sup>See, e.g., *Harris v. McRae*, 448 U.S. 297, 315-318, 321-322 (1980); *Maher v. Roe*, 432 U.S. 464, 475-476 (1977); *American Party v. White*, 415 U.S. 767, 793-794 (1974); *Johnson v. Robison*, 415 U.S. 361, 375 n.14, 385 (1974); *Cammarano v. United States*, 358 U.S. 498, 513 (1959). Cf. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 40-41 (1973).

Appellants' First Amendment claim for strict scrutiny "fares no better in equal protection garb." *Perry Education Association v. Perry Local Educators' Association*, No. 81-896 (Feb. 23, 1983), slip op. 16. Congress's action is entitled to no less deference, and the impact on fundamental rights is no more significant, when viewed through another lens. Nor does the Act affect any suspect class. It simply distinguishes Members of Congress from everyone else, because only Members of Congress need to communicate with their constituents about the business of government. The relevant question is thus whether what Congress has done "rationally furthers some legitimate, articulated \* \* \* purpose and therefore does not constitute an invidious discrimination \* \* \*." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1. 17 (1973).

The conclusion that strict scrutiny is inapplicable to government support for congressional communications with constituents follows inexorably from this Court's recent decision in *Perry Education Association v. Perry Local Educators' Association*, *supra*. In that case, a collective bargaining agreement giving a teachers' union exclusive access to the interschool mail system was challenged by a rival union. The rival union was concerned that " 'teachers inevitably will receive from [their union] self-laudatory descriptions of its activities on their behalf' " (slip op. 11) (Brennan, J., dissenting). The Court concluded that (slip op. 11-14; footnotes omitted):

[t]he touchstone for evaluating the[] distinction[] is whether [it is] reasonable in light of the purpose which the forum at issue serves.

\* \* \* \* \*

The differential access provided PEA and PLEA is reasonable because it is wholly consistent with the district's legitimate interest \* \* \*. Use of school mail

facilities enables PEA to perform effectively its obligations as exclusive representative of *all* Perry Township teachers. Conversely, PLEA does not have any official responsibility in connection with the school district and need not be entitled to the same rights of access to school mailboxes.

Indeed, this case is less troubling than *Perry Education Association* for several reasons. In the first place, there was in that case no rule "expressly limiting the [union's] use of the system to messages relating to its official duties" (slip op. 13) (Brennan, J., dissenting). The Congressional Franking Act, by contrast, includes just such a limitation. 39 U.S.C. 3210(a)(4). More important, the rival union in *Perry Education Association* was "explicitly denied access to the mail system" (slip op. 11) (Brennan, J., dissenting). Here, on the other hand, rival candidates have no restrictions placed on their ability to use the mails. See *United States Postal Service v. Greenburgh Civic Associations*, 453 U.S. 114, 127 (1981).

2. Despite appellants' repeated reference to mass mailings that "have no relationship to official business" (J.S. 4, 5, 10, 12, 14, 15),<sup>11</sup> this case has nothing to do with such uses of the frank. Appellants have challenged the validity of the Congressional Franking Act on its face (J.S. App. 36a, 41a-42a, 50a), and the Act specifically proscribes use of the frank for matters "unrelated to \* \* \* official business, activities, and duties" (39 U.S.C. 3210(a)(4)). Instead, what is involved are mailings that necessarily further the constitutional work of Congress, but that at the same time have the unavoidable (and perhaps desired) effect of influencing

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<sup>11</sup>Appellants in each case omit the district court's qualifying phrase: "Several Senators and Representatives have targeted franked mass mailings in ways that frequently have no relationship to official business" (J.S. App. 13a).

voters' perception of the incumbent. Thus, the decision about how to regulate such mail must inevitably strike a balance between restricting the channels of communication open to Congress and avoiding influence on electoral contests. In striking that balance, unusual deference is due to Congress's own determination about its needs to correspond with and request information from its constituents. Appellants in fact "concede that the problem is merely one of drawing lines" (J.S. App. 21a). That being so, there is no warrant for judicial rewriting of the Act unless the lines Congress has drawn to prevent abuse of the privilege are irrational.

The Act states that the frank may not be used for matter "unrelated to \* \* \* official business, activities, and duties" (39 U.S.C. 3210(a)(4)). This provision guarantees that every franked communication, whatever its impact on voters, carries out in some way the work that the Constitution assigns to Congress. The Act also forbids any unsolicited mass mailing within two months of any primary or general election if the member is a candidate (39 U.S.C. (Supp. V) 3210(a)(6)(A)(i), and (C)), and forbids at all times the solicitation of political support, votes, or financial assistance (39 U.S.C. (Supp. V) 3210(a)(5)(C)). It creates watchdogs in both Houses of Congress to police compliance through issuance of appropriate regulations, prior review of mailings, and investigation and sanctioning of violations (2 U.S.C. (& Supp. V) 501-502). Finally, it contemplates judicial review (2 U.S.C. (Supp. V) 501(e)) and civil actions (2 U.S.C. 502(c)) as outside checks on enforcement. There may be other ways of approaching the problem, but the one chosen is certainly not irrational. "Congress was not obliged to select instead from among appellants' suggested alternatives." *Buckley v. Valeo*, *supra*, 424 U.S. at 100.

## II. APPELLANTS' PROPOSED REVISIONS OF THE CONGRESSIONAL FRANKING ACT WOULD SERIOUSLY INTRUDE ON THE FUNCTIONS OF CONGRESS, AND PRODUCE LITTLE CORRESPONDING BENEFIT

Appellants object to several kinds of communication permitted by the balance Congress struck in the Act. They suggest "[f]irst, and most important, [that] Congress \* \* \* deny use of the frank for mass mailings" (J.S. 17). They also argue that the frank should be denied for certain material on account of its content—*e.g.*, material laudatory of the incumbent, and questionnaires that "obtain demographic and other information helpful to identifying recipients for targeted mailings" (*id.* at 14, 17). Third, they claim that regardless of the content of a communication, it should not be sent free to lists of addresses compiled in certain ways—*e.g.*, "names maintained in a computer file which are accompanied by party designation" (*id.* at 17). The "governing principle" they propose is that the frank may not be used for any "mailing whose purpose or primary effect, judging by the content in light of the circumstances, is the advancement of the incumbent's campaign for reelection. Cf. *Abington School District v. Schempp*, 374 U.S. 203, 222 (1963); *Widmar v. Vincent*," 454 U.S. 263 (1981) (J.S. 15); see also J.S. 18 ("unconstitutional \* \* \* if the purpose or primary effect \* \* \* is to promote his reelection").

That analogy to the Establishment Clause, however, is "patently inapplicable" to this case. *Buckley v. Valeo*, *supra*, 424 U.S. at 92. In the first place (*id.* at 93 n.127),

[t]he historical bases of the Religion and Speech Clauses are markedly different. \* \* \* [R]eligious worship \* \* \* must be strictly protected from government intervention. \* \* \* But the central purpose of the

Speech and Press Clauses was to assure a society in which "uninhibited, robust, and wide-open" public debate concerning matters of public interest would thrive \* \* \*. Legislation to enhance these First Amendment values is the rule, not the exception. Our statute books are replete with laws providing financial assistance to the exercise of free speech \* \* \*.

Thus, while the Establishment Clause guards against the one risk of blending religion and government, in this case there are risks on both sides: the danger of curtailing communication of fundamental importance to both Congress and citizen, and the danger of government-funded electioneering.

In the second place, even if it were desirable to strike the balance differently than Congress has, it is impossible to erect a "wall of separation" between representative and political functions.

There is no time during a Member's term where his function can be designated purely representative or purely political. In a republic where the people freely choose whom they will elect and where the representatives are responsible to the people, the representative function and the political process are inseparable. Yet \* \* \* the free flow of information from representative to constituent is fundamental to representative government. Hence legislation limiting that flow must be drawn in the narrowest of terms.

S. Rep. No. 97-155, *supra*, at 5.

In the third place, the restrictions advanced by appellants would entail considerable disruption for the work of Congress. The current statutory test determines frankability by asking an objective question: What is "the type and content of the mail sent[?]" 39 U.S.C. (Supp. V) 3210(e). Appellants'

emphasis on the purpose of a communication, by contrast, would require "probing into the deepest thoughts and motives of an individual Member of Congress" (J.S. App. 24a). As this Court has emphasized in a related context, "in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it." *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 508 (1975). To demand in addition what appellants ask—an examination of "the size of the mailing; the timing of the mailing in relation to the incumbent's declaration of candidacy or the date of the primary or general election; whether the list of addressees has been compiled for campaign purposes, came from a political party, or was based upon party affiliation; and whether the mailing was targeted in ways bearing no relation to official business" (J.S. 15; footnote omitted)—would frequently make the cost of communication unacceptably high. The chill on congressional communication is, moreover, unlike the restrictions imposed on Congress by the Establishment Clause, for in this case "*the citizens have a right to expect information, not only of the acts of Government, but also the principles upon which they were grounded.*" S. Rep. No. 97-155, *supra*, at 4 (emphasis added), quoting 3 Annals of Cong. 277 (1791).

In contrast to the draconian measures advanced by appellants, the balance struck by Congress in the Act sensibly accommodates the competing interests. Consider, for example, appellants' central concern—the use of mass mailings (J.S. 17; J.S. App. 41a). Presumably because of the "primary effect" (or forbidden purpose) such mailings may have, appellants make the remarkable suggestion that Members of Congress should be forbidden to send letters to more than 500 of their constituents at once. They would make it impossible for a Senator to mail more than a handful of his

constituents an explanation of how he stood on Social Security reform or a nuclear freeze—matters of concern to large numbers of them.

The Act, on the other hand, forbids such mailings within two months of elections (39 U.S.C. (Supp. V) 3210(a)(6)(A) and (C)), and also forbids mass mailing of any matter paid for from campaign funds (39 U.S.C. (Supp. V) 3210(f)). It further directs the Senate Committee and House Commission to prescribe rules limiting the number of mailings using the postal patron form of address (39 U.S.C. (Supp. V) 3210(d)(5)). The House Commission pursuant to statutory direction (39 U.S.C. (Supp. V) 3210(d)(6)(A)) has adopted regulations requiring advance review of any such mass mailings. House Rule XLVI, 97th Cong., 2d Sess. The Senate requires registration of all mass mailings with the Secretary of the Senate, and public disclosure of the matter mailed and the groups to which it was sent. Select Committee on Ethics, United States Senate, *Regulations Governing the Use of the Mailing Frank by Members and Officers of The United States Senate* 14-15 (1979).

A second category of mailings that appellants would forbid regardless of content are those sent to "lists of addressees whose identity or selection marks the mailing as political" (J.S. 17). One who compiled a list of his constituents over age 65 "in the course of a political campaign" (*ibid.*) would thus be precluded from sending those individuals his views on Medicare or the Age Discrimination in Employment Act. So too, "persons who are currently outside a Congressman's district but who, because of reapportionment, will be eligible to vote in the District" (*ibid.*) would be disqualified from hearing the views of the one person in Congress they are best able to influence. The Act, by contrast, forbids a Congressman to send mass mailings outside his congressional district if he is a candidate for

some *other* office—a situation where the use of the frank would do far less to promote the business of the House. 39 U.S.C. (Supp. V) 3210(a)(6)(A)(ii)(I). It also specifically bars franked mail soliciting “political support \* \* \* or a vote or financial assistance for any candidate for any public office” (39 U.S.C. (Supp. V) 3210(a)(5)(C)).

Appellants’ objections to various kinds of mailings on the basis of their content are at best insignificant. They complain, for example, that the frank is available for “material laudatory of the Member,” and for “material conveying congratulations to constituents or reporting on awards or honors won by them” (J.S. 17). But the Act specifically prohibits “mail matter \* \* \* laudatory \* \* \* of any Member \* \* \* on a purely personal or political basis rather than on the basis of performance of official duties” (39 U.S.C. 3210(a)(5)(A)). The 1981 amendment to the Act also eliminates “authority to frank mail matter which consists solely of \* \* \* congratulations for a personal distinction.” It remains permissible to send “congratulations for distinctions of a public nature” such as election or appointment to public office, since “[i]n such cases, there is a legitimate legislative reason for making such contracts at public expense.” S. Rep. No. 97-155, *supra*, at 6; 39 U.S.C. (Supp. V) 3210(a)(3)(F).

**CONCLUSION**

The judgment of the district court should be summarily affirmed.

Respectfully submitted.

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